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FILED
JUL 13 2004

No. 03-633

In The

Supreme Court of the United States

DONALD P. ROPER, SUPERINTENDENT,
POTOSI CORRECTIONAL CENTER,

Petitioner,

v.

CHRISTOPHER SIMMONS,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Missouri

BRIEF OF *AMICUS CURIAE* MISSOURI BAN YOUTH EXECUTIONS (BYE) COALITION IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS*

The Missouri Ban Youth Executions (BYE) Coalition represents thousands of Missouri citizens across the social spectrum.[1] It is comprised of more than twenty groups having an interest in adolescent development and behavior, including medical and health associations, as well as educational, religious, service, and child advocacy organizations. Among BYE's members are the Missouri Juvenile Justice Association, Citizens for Missouri's Children, and the state chapters of the National Education Association and the National Association of Social Workers. A list of BYE Coalition members endorsing this brief is attached hereto as Appendix 1.

BYE formed in the fall of 2002 to end the death penalty for minors in our state. Many of the BYE Coalition member groups have no position on the death penalty in general, while some oppose the practice in all instances. Its members are nevertheless united in opposing the execution of juvenile offenders as a violation of our state and federal prohibitions against cruel and unusual punishment.

Amicus files this brief with the written consent of petitioner and respondent (enclosed), pursuant to Rule 37.3(a).

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[1] Pursuant to Rule 37.6, *amicus* hereby states that counsel for neither party has authored any portion of this brief. The Missouri BYE Coalition has received financial assistance from the following organizations to defray the expenses of preparing this brief: a) The Justice Project, 1725 Eye Street Northwest, Fourth Floor, Washington, D.C., and b) The Tides Foundation, New York Office, 40 Exchange Place, Suite 1111, New York, N.Y.

SUMMARY OF ARGUMENT

Amicus concurs with the Missouri Supreme Court's observation that our sense of cruel and unusual punishment must be "guided by the 'evolving standards of decency that mark the progress of a maturing society.'" *State ex rel. Simmons v. Roper*, 112 S.W.3d 397, 401 (Mo. banc 2003), quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Such standards are not static, but must "acquire meaning as public opinion becomes enlightened by a humane justice." *Simmons*, 112 S.W.3d at 401, quoting *Weems v. United States*, 217 U.S. 349, 378 (1910).

Recent events document a growing consensus against juvenile executions in Missouri, the United States and the world. It has taken many forms, including legislative actions, jury decisions, statements by professional associations, public opinion, and courts' frequent reversals of death sentences imposed on juvenile offenders. But notwithstanding this consensus, the execution of citizens who are not considered mature enough to enter contracts, vote, or serve on juries, and who have been demonstrated by scientific evidence to lack the cognitive skills and decision-making abilities of adults, violates the "basic concept underlying the Eighth Amendment," which is "nothing less than the dignity of man." *Trop*, 356 U.S. at 100.

ARGUMENT

I. THE PHYSIOLOGICAL BASIS OF JUVENILES' IMPAIRED SENSE OF JUDGMENT, AS ILLUSTRATED BY EMERGING SCIENTIFIC EVIDENCE, UNDERMINES ANY LEGITIMATE PENOLOGICAL PURPOSE OF EXECUTING JUVENILE OFFENDERS.

A criminal sanction is cruel and unusual if, among other things, it is "so totally without penological justification that it results in the gratuitous infliction of suffering." *Gregg v. Georgia*, 428 U.S. 153, 183 (1976). In holding that the death penalty does not categorically violate the Eighth Amendment, *Gregg* examined the purported social objectives of retribution and deterrence. *Id.* at 183-86. But neither goal is met by executing juvenile offenders. The principle of retribution reserves the harshest punishment for those considered the most deserving, but juveniles are by their very status considered too immature for a wide variety of adult rights, privileges and responsibilities. Similarly, the deterrence of prospective offenders cannot justify the execution of a class of offenders defined by their impulsiveness and diminished capacities. *See State ex rel. Simmons v. Roper*, 112 S.W.3d 397, 412 (Mo. banc 2003).

This Court's assessment of society's evolving standards of decency now takes account of "evidence [of] . . . a much broader social and professional consensus," including the views of organizations with relevant expertise. *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002); *accord Thompson v. Oklahoma*, 487 U.S. 815, 830-31 & n.31 (1988) (considering the views of "respected professional organizations, by other nations that share our Anglo-American heritage, and by the leading members of the Western European community"). The Missouri BYE

Coalition files this brief to represent its members' experience as professionals and volunteers who work with adolescents in the state where this case originated.

Adolescence is a transformative and often turbulent period of life when one is no longer a child, but is not yet an adult. Science has shown that the ability to soundly judge and plan for the future are among the last characteristics to mature among young people. "The current research on adolescence indicates that during this transitional stage, a young person's cognitive abilities, emotions, judgment, impulse control, identity and their brain are still developing," reported Elizabeth Gaines, a Youth Policy Analyst with Citizens for Missouri's Children, in testimony she offered during a March 2003 public hearing before the Senate Judiciary and Civil and Criminal Jurisprudence Committee, in support of Senate Bill 312. The bill would have raised the minimum for death penalty consideration to eighteen years of age in Missouri. The Missouri Psychological Association (MOPA) took a similar stand in 2004, concluding that "recent MRI neurodevelopmental studies are seen as a scientific tipping point, shedding light on adolescent neurologic maturation as it relates to juvenile culpability." Scientific Affairs Committee Report from MOPA Board of Directors Meeting, June 3, 2004 (on file with counsel).

The disadvantaged environment in which many juvenile offenders are raised exacerbates their tendency toward impulsiveness and poor judgment. Once in the criminal justice system, they are prone to poor decisions and errors that an adult in the same situation would be unlikely to make. According to Gaines' testimony on behalf of Citizens for Missouri's Children, "Studies show that

youth who commit violent acts most often experienced maltreatment, and were exposed to a number of risk factors that make them more susceptible to becoming a violent offender."

Missouri's experience with the juvenile death penalty exemplifies these findings. Since Missouri enacted a death penalty statute in 1977, four individuals have been sentenced to death for murders committed as juveniles. All four fit the nationwide sociological profiles of juveniles who ultimately commit murder: they led lives marred by physical abuse, poverty, neglect, sexual molestation, mental illness, and inadequate intervention by social service agencies. *See* Chris Mallett, *Socio-Historical Analysis of Juvenile Offenders on Death Row*, Juvenile Correctional Mental Health Report (July 2003), at 63.

• ***Heath Wilkins*** stabbed liquor store attendant Nancy Allen when he was only sixteen years old. Having spent more than half of his life in state-run institutions, he was living in a public park at the time of the crime. The trial court accepted Wilkins' stated desire to represent himself and to be sentenced to death at age seventeen. *See* Benita Y. Williams, *Years of Appeals End in Guilty Plea; Man Sentenced to Death as Teen Won't Be Executed*, Kansas City Star, May 21, 1999, at B1. "He was a severely abused, abandoned, homeless teenager. . . . In 1986, he gave up the right to plead to a lesser charge because he didn't know he could," said his habeas attorney Sean D. O'Brien. *Id.* Wilkins was re-sentenced to three life sentences in May 1999, and apologized to Allen's relatives. "I am deeply sorry for the crime I committed. It is to you that I owe the apology. There is nothing I can do to repay the loss caused by my stupidity. I know that'll never be enough. I'm sorry." *Id.*

• ***Antonio Richardson*** was sixteen years old when he participated in the 1991 murders of Julie and Robin Kerry. Richardson grew up in a fatherless home, with a mother who routinely abandoned her three children for days or weeks to use her federal-assistance check to purchase drugs and alcohol and to live with a series of boyfriends. As the eldest child, he was forced to fend for himself and his brother at age seven. The two made their living by searching out relatives and stealing. The night before trial, an activist-journalist visited Richardson in his cell and convinced him to reject the prosecution's offer of a life sentence in return for a plea of guilty to first degree murder, and instead to fight for his "innocence." He went to trial and received a sentence of death. *See* American Bar Association, *Borderline Retarded and Juvenile Offender Antonio Richardson No Longer Faces Execution in Missouri*, available at <http://www.abanet.org/crimjust/juvjus/richardson.html> (last visited June 24, 2004). In an unpublished order, the Missouri Supreme Court recently reduced Richardson's sentence to life without parole under state law and *Ring v. Arizona*, 536 U.S. 584 (2002). *See* Editorial, *Juries Must Decide*, St. Louis Post-Dispatch, Oct. 31, 2003, at B6.

• ***Frederick Lashley*** was seventeen years old when he murdered his foster mother, and was executed by the State of Missouri in 1993. According to Amnesty International, Lashley "had been abandoned at a young age by his mother and had been brought up by relatives. He began drinking alcohol heavily at the age of 10 and at the time of the crime was homeless. At his trial he was represented by a lawyer who had never previously acted in a capital case." *See* Amnesty International, *Juveniles and the Death Penalty: Executions Worldwide Since 1985*, available at

<http//:www.amnestyusa.org/abolish/act500298.html> (last visited June 24, 2004).

• ***Christopher Simmons*** endured an abusive and dysfunctional family environment, primarily at the hands of a stepfather who routinely beat him, once to the point of puncturing his eardrum. The stepfather also brought Simmons to a tavern when he was a child, and forced him to drink alcohol for the amusement of other patrons. On one occasion, he took Simmons fishing and tied him to a tree for hours so that he would not wander away. As a teenager, Simmons turned to drugs and alcohol to escape his reality, and then to theft and burglary to support his habits. He and an accomplice killed Shirley Crook in the process of one such theft. *See* American Bar Association, *Chris's Case*, available at <http//:www.abanet.org/crimjust/juvjus/simmons.html> (last visited June 24, 2004). The Missouri Supreme Court twice stayed Simmons' scheduled executions before overturning his death sentence in August 2003. *See State ex rel. Simmons v. Roper*, 112 S.W.3d 397 (Mo. banc 2003).

Through its laws and institutions, our society and state already recognize the dangers and vulnerabilities of youth. We commit great resources to protect children from drugs, violence and sexual activity, as well as to encourage positive development through character education, mentoring, and other programs. Moreover, we set eighteen as the age of legal responsibility. A Missouri citizen must be at least eighteen to vote, consume tobacco, drive without restrictions, make independent medical decisions, or enter into enforceable contracts. We shelter juveniles from these activities because of our shared belief that they lack the maturity to manage these responsibilities and their consequences. In fact, Missouri is so concerned about the

impetuosity of youth that it is one of only two states to set a minimum age of twenty-one for service on juries – including those that sentence juvenile offenders for death-eligible crimes. *See* Mo. Rev. Stat. § 494.425.1 (2000).

These restrictions and protections reflect a broad understanding that juveniles are more vulnerable to poor judgment than are their adult counterparts, and less blameworthy when they succumb to it. The ultimate punishment must be reserved for more deserving offenders, if it must persist at all. *See Atkins v. Virginia*, 536 U.S. 304, 319 (2002) ("Since *Gregg*, our jurisprudence has consistently confined the imposition of the death penalty to a narrow category of the most serious crimes.").

II. MISSOURI'S EXPERIENCE DEMONSTRATES AN UNACCEPTABLE RISK THAT A DEATH SENTENCE WILL BE IMPOSED BECAUSE OF AN OFFENDER'S YOUTH, RATHER THAN IN SPITE OF IT.

When offenders with reduced capacity are eligible for capital punishment, there is a risk "that the death penalty will be imposed in spite of factors which may call for a less severe penalty." *Atkins v. Virginia*, 536 U.S. 304, 320 (2002), quoting *Lockett v. Ohio*, 438 U.S. 586, 605 (1978). *Atkins* observed that a defendant's mental retardation "can be a two-edged sword that may enhance the likelihood that the aggravating factor of future dangerousness will be found by the jury." 536 U.S. at 321.

Such was the case for Christopher Simmons, whose prosecutor requested a death sentence *because* of respondent's youth:

> As I told you yesterday, he used his age in committing this offense because he didn't believe that you would think that he was capable of it. Well, you do, and you have found it. Don't let him use his age to protect himself now, because then he wins.

Trial Tr. 1136-37.

> Let's look at the mitigating circumstances. Let's look at that. He listed the mitigating circumstances. I don't have them in front of me here. Age, he says. Think about age. Seventeen years old. Isn't that scary. Doesn't that scare you? Mitigating? Quite the contrary I submit. Quite the contrary.

Trial Tr. 1156-57.

Quantitative research documents the existence of a "two-edged sword" for Missouri minors facing the death penalty. Younger defendants in Missouri are particularly vulnerable to harsh treatment from prosecutors and courts, precisely because they lack the experiential, social and economic capital possessed by their elders. *See* Michael Lenza, David Keys & Teresa Guess, *The Prevailing Injustices in the Application of the Death Penalty in Missouri, 1978-1996*, available at <http://www.umsl.edu/~phillips/dp/Lenza1.html> (last visited June 24, 2004). Among other things, Lenza et al. found that those accused of homicide offenses while under the age of eighteen were actually one-sixth *more* likely than their adult counterparts to be charged with death-eligible capital murder. *See* Appendix 2 (David Keys affidavit).[2] "Being a minor in

[2] Capital murder has since been abolished as a separate offense in Missouri. Current law provides a sentence of death or life without the

(Continued on following page)

Missouri tends to act as an aggravator, as minors have less social value." Lenza et al., *supra*.

III. THE EXECUTION OF JUVENILE OFFENDERS VIOLATES CONTEMPORARY STANDARDS OF DECENCY ON A NATIONAL LEVEL AS WELL AS IN MISSOURI ITSELF.

Our evolving standards of decency are to be measured by "objective factors to the maximum possible extent." *Coker v. Georgia*, 433 U.S. 584, 592 (1977). Legislative enactments are the clearest and "most reliable" such measure. *See Penry v. Lynaugh*, 492 U.S. 302, 331 (1989). The court must consider not only the absolute number of states that authorize the death penalty for a given set of offenders, but also any discernible trend in recent legislative enactments. "It is not so much the number of these States that is significant, but the consistency of the direction of change." *Atkins v. Virginia*, 536 U.S. 304, 315 (2002).

Since this Court's opinion in *Stanford v. Kentucky*, 492 U.S. 361 (1989), eight death penalty states have abolished the practice for offenders younger than eighteen years of age. Indiana and Montana did so by legislative bills in 2001, while South Dakota and Wyoming did so in March 2004. *See* Ind. Code Ann. § 35-50-2-3(b)(1)(A) (West Supp. 2003); Mont. Code. Ann. § 45-5-102(2) (2003); 2004 S.D. Laws Ch. 166 (S.B. 182); 2004 Wyo. Sess. Laws Ch. 29 (H.B. 5). Kansas and New York enacted the death penalty in 1994 and 1995, respectively, but both set eighteen as

possibility of parole for first degree murder. *See* Mo. Rev. Stat. § 565.020.2 (2000). The initial decision of whether to seek the death penalty in a case of first degree murder is, of course, the prosecutor's.

the minimum age. *See* Kan. Stat. Ann. § 21-4622 (2000); N.Y. Penal Law § 125.27(1)(b) (McKinney 2004) (exempting juveniles from death-eligible offense of first degree murder). In 1993, the Washington Supreme Court construed its death penalty statute to exempt juvenile offenders – an action similar to that taken by the Missouri Supreme Court as a matter of constitutional law. *State v. Furman*, 858 P.2d 1092, 1102-03 (Wash. 1993). Including the twelve states that do not have the death penalty at all, there are now thirty-one states that prohibit the execution of juvenile offenders, compared to the thirty states that prohibited execution of mentally retarded defendants when *Atkins* was decided. *See State ex rel. Simmons v. Roper*, 112 S.W.3d 397, 408 (Mo. banc 2003).[3]

Likewise, not a single state has lowered its death-eligibility threshold to an age below eighteen, nor enacted a capital punishment statute that permits juvenile executions. *Cf. Atkins*, 536 U.S. at 315-16 ("Given the well-known fact that anticrime legislation is far more popular than legislation providing protections for persons guilty of violent crime, the large number of States prohibiting the execution of mentally retarded persons (and the complete absence of States passing legislation reinstating the power to conduct such executions) provides powerful evidence that today our society views mentally retarded offenders as categorically less culpable than the average criminal."). Of the nineteen states which permit juvenile executions,

[3] The thirty-one states are as follows: the twelve that do not have the death penalty at all; the eleven that had already banned juvenile executions when *Stanford* was issued; the five that did so after *Stanford* and up to the time of the Missouri Supreme Court's opinion (*see Simmons*, 112 S.W.3d at 408); the two that did so by statute after *Simmons* (South Dakota and Wyoming); and Missouri itself.

ten do not list a specific age threshold for the death penalty, and cannot be said to have made a specific legislative judgment that juveniles should be death-eligible. *See* American Bar Association, *Juvenile Death Penalty in Context*, available at <http://www.abanet.org/crimjust/juvjus/resources.html#context> (last visited June 24, 2004).

Although the juvenile death penalty remains in the Missouri statute books, its place there is tenuous at best. *Cf. Atkins,* 536 U.S. at 315 & nn.16-17 (discussing near-passage of bills to ban executions of the mentally retarded in Texas, Virginia and Nevada). A juvenile death penalty ban garnered significant bipartisan support in 2003 through House Bill 255, which was co-sponsored by five Democrats and fourteen Republicans, all but one of whom generally support the death penalty. After a public hearing in January, the chair of the Crime Prevention and Public Safety Committee delayed a vote to pass HB 255 for the full House to consider. Senate Bill 312, also a juvenile death penalty ban, was co-sponsored by four Republican lawmakers, three of whom are death penalty proponents. SB 312 was voted "Do Pass" out of the Senate Judiciary Committee. The juvenile measure became the legislative centerpiece of a larger judiciary bill, which the full Senate never voted upon. Although this legislative effort did not succeed, it was not due to a lack of widespread support. HB 255's lead sponsor, Rep. Larry Crawford, one of the most conservative Republicans in the legislature, stated in a letter to the American Bar Association's Juvenile Justice Center that, "A ban on the juvenile death sentencing enjoys broad, majority support among Missouri citizens and elected officials. HB 255 failed to become law, not because of the legislature's opposition to its concept.

Rather, it stalled due to the appropriate, high priority legislators placed on addressing our state's severe budget crisis and the indifference of a couple of key legislators." Rep. Crawford's letter is attached hereto as Appendix 3.

The next year saw a renewed effort to end the juvenile death penalty in Missouri. Senate Bill 1382 would have raised the minimum age for death-eligibility to eighteen, along with establishing eighteen as the standard age for other rights, privileges and responsibilities under state law. The bill was voted "Do Pass" by the Senate Judiciary and Civil and Criminal Jurisprudence Committee, but the legislative session ended before either chamber could undertake floor debate on the bill. *See* Missouri Senate, *SB 1382: Increases the Age of Majority to Eighteen in Various Statutes*, available at <http://www.senate.mo.gov/04INFO/bills/SB1382.htm> (last visited June 24, 2004).

The juvenile death penalty is generally opposed by Missouri's legislators, even though they have not yet abolished it. In a survey conducted by the Missouri Catholic Conference in 2002, only 13 percent of House and Senate members elected that year expressed opposition to a ban on such executions, while 47 percent expressed support, 28 percent did not respond, and 12 percent expressed no opinion. *See* Appendix 4 (affidavit of Lawrence A. Weber), attached.

Legislative actions aside, contemporary standards of decency are additionally informed by the frequency with which a given class of defendants is sentenced to death by juries and actually executed by states. *See Penry*, 492 U.S. at 331; *Atkins*, 536 U.S. at 316 ("The practice, therefore, has become truly unusual, and it is fair to say that a national consensus has developed against it."). Juries have

been particularly reluctant to sentence juvenile offenders to death. Law Professor Victor Streib has found that "The annual death sentencing rate for juvenile offenses has been declining rapidly and is now much less than half of the annual rate of the late 1990s." Victor Streib, *The Juvenile Death Penalty Today* (March 2004), at 3, 15-22, available at <http://www.law.onu.edu/faculty/streib/juvdeath.pdf> (last visited June 24, 2004). Across the country, just two juveniles were sentenced to death in 2003. Adam Liptak, *Penalty for Young Sniper Could Spur Change in Law*, N.Y. Times, Dec. 25, 2003.

Actual executions are rarer still. Of the 915 inmates executed in the United States since 1976, only twenty-two were juvenile offenders. *See* Death Penalty Information Center, *The Execution of Juveniles in the U.S.*, available at <http://www.deathpenaltyinfo.org/article.php?scid=27&did=203> (last visited June 24, 2004). Of the nineteen states that allow such executions, only seven have actually carried one out in the post-*Furman* era. See American Bar Association Juvenile Justice Center, *Evolving Standards of Decency*, at 1, available at <http://justice.policy.net/cjedfund/resourcekit/ABA_Evolving_Standards_Factsheet_01.30.04.pdf?PROACTIVE_ID=cecefc9c6c6cbc7ccc5cecfcfcfc5cececacfc9c9c6c9c7cec5cf> (last visited June 24, 2004). Of these, only three states, Texas (with 13 executions of juvenile offenders), Virginia (3) and Oklahoma (2) have used this punishment more than once. *Id.* at 2. Only ten juvenile offenders have been executed in the last five years, and Texas alone carried out six of these executions. *See* Death Penalty Information Center, *Age Requirements for the Death Penalty and the Execution of Juveniles*,

available at <http://www.deathpenaltyinfo.org/article.php?scid=27&did=203#execsus> (last visited June 24, 2004).[4] During this same period, only seven juvenile offenders were executed in all other countries of the world – four by Iran, and one each by Pakistan, China, and the Democratic Republic of Congo. *Id.*

The state of Missouri has executed sixty adults since it reinstated the death penalty, but only one juvenile offender. *See Executions, 1989 – present*, available at <http://www.missourinet.com/CapitalPunishment/executions.htm> (last visited June 24, 2004). When Missouri executed Frederick Lashley by lethal injection on July 28, 1993, it had not executed a juvenile offender in sixty-three years. To this date, the state has executed only two such offenders in the last 105 years. *See* Harriet C. Frazier, *The Execution of Juveniles in Missouri, Part One*, J. Mo. Bar. (Dec. 1990), at 634; Harriet C. Frazier, *The Execution of Juveniles in Missouri, Part Two*, J. Mo. Bar. (Jan. 1991), at 49-51. Lashley's execution was the target of substantial opposition throughout our state, including that of major newspapers and even the survivors of victim Janie Tracy. *See* Stephen Kirkland and Tim Bryant, *Man Who Killed Foster Mother is Executed by Lethal Injection*, St. Louis Post-Dispatch (Jul. 28, 1993), at 1B; Editorial, *Missouri Moves Up a Notch*, St. Louis Post-Dispatch (Jul. 30, 1993), at 6B. At present Missouri has no juvenile offenders under a sentence of death, as Christopher Simmons, Antonio

[4] Nine of the last ten juvenile offenders to be executed by Texas were African-American or Hispanic, as are two of the four whom Missouri has sentenced to death since reinstating capital punishment. *See American Bar Association, Juvenile Justice Center, Facts and Figures*, available at <http://www.abanet.org/crimjust/juvjus/dparticles/factsheetfactsfigures.pdf> (last visited June 24, 2004).

Richardson and Heath Wilkins have all obtained relief from the courts.

Nor do Missouri's citizens favor sentencing juveniles to death, a practice that is becoming more unpopular with time. *Cf. Atkins*, 536 U.S. at 316 n.21 ("Finally, polling data shows a widespread consensus among Americans, even those who support the death penalty, that executing the mentally retarded is wrong."). A survey completed in June 2004 showed that although 68 percent of Missourians are strongly or somewhat in favor of the death penalty, only 24.6 percent favor imposing it upon juvenile murderers with 59 percent opposed and 16 percent expressing no opinion. *See* Affidavit of Gary D. Brinker, attached hereto as Appendix 5. Indeed, Missourians' support for juvenile executions has fallen by almost one-third in the last year. A survey in June 2003 found that 34 percent of respondents supported the practice, compared to 24.6 percent today. *See State ex rel. Simmons v. Roper*, 112 S.W.3d 397, 411 & n.18 (Mo. banc 2003); Juvenile Offender Public Opinion Survey, Center for Advanced Social Research, University of Missouri-Columbia (Mar. 2003), available at <http://www.abanet.org/crimjust/juvjus/mopoll.pdf> (last visited June 24, 2004). Of those expressing an opinion in the June 2004 survey, 71 percent opposed the death penalty for a murder committed by a juvenile, with only 29 percent in favor. *See* Appendix 5.

Legislative enactments, the informed opinions of professionals who work with and advocate for troubled youth, the tide of public opinion, and the hesitancy of jurors and states to impose and inflict the ultimate punishment on the young all reflect the same societal consensus: that our standards of decency do not countenance the

death penalty for crimes committed by children. It is past time for the juvenile death penalty to take its rightful place as a lamentable fact of history.

CONCLUSION

WHEREFORE, for all the foregoing reasons, *amicus* Missouri BYE Coalition respectfully requests that this Court affirm the judgment of the Missouri Supreme Court.

Respectfully submitted,

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APPENDIX 1

Missouri BYE Coalition Membership Organizations Endorsing *Amicus* Brief

American Friends Service Committee
Amnesty International-Missouri Chapter*
Catholic Services for Children & Youth
Church Women United of Missouri
Citizens for Missouri's Children
Frederick Douglass Coalition
Grass Roots Organizing (GRO)
Institute for Peace and Justice
Jewish Community Relations Council
Let's Start
Mid-Missouri Fellowship of Reconciliation (FOR)
Missouri American Civil Liberties Union (ACLU)**
Missouri Catholic Conference (MCC)
Missouri Chapter, American Academy of Pediatrics
Missouri Citizens United for Rehabilitation of Errants (CURE)
Missouri Juvenile Justice Association
Missouri Association for Social Welfare (MASW)
Missouri National Education Association (MNEA)
Missouri Psychological Association (MOPA)*
Missouri State Conference National Association for the Advancement of Colored People (NAACP)
Missourians to Abolish the Death Penalty (MADP)

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* Member group of the MO BYE Coalition but unable to sign onto brief due to international group restriction.

** Member group of the MO BYE Coalition, signing onto its national group's amicus brief on behalf of Simmons.

MU Students Against Youth Executions
National Assn. of Social Workers (NASW), MO Chapter
Sisters of St. Joseph of Carondelet
Vision for Children at Risk
Youth Council for Positive Development

APPENDIX 2

IN THE UNITED STATES SUPREME COURT

DONALD ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER,	)	
Petitioner,	)	**No. 03-633**
v.	)	
CHRISTOPHER SIMMONS,	)	
Respondent.	)	

SWORN AFFIDAVIT OF DAVID KEYS

I, David Keys, after being duly sworn on my oath, state as follows:

1. I am an associate professor of Sociology and Criminal Justice at the State University of New York-Plattsburgh, and I serve as chairperson of the department.

2. I am a co-author of the study entitled "Prevailing Injustices in the Application of the Death Penalty in Missouri (1978-1996)" along with Michael Lenza and Teresa Guess. The study is currently under review for publication.

3. I have re-analyzed the data underlying the study in order to ascertain the charging practices of Missouri prosecutors for homicide suspects under the age of eighteen, as compared to those aged eighteen and older. In doing so, I have concluded that Missouri prosecutors charged seven percent of such defendants under eighteen years of age with capital murder, compared to six percent of defendants who were eighteen

years old or older at the time of the offense. Therefore, those accused of committing homicides when under the age of eighteen were 16.7 percent more likely to be charged with capital murder than were those accused of committing homicides at the age of eighteen or above.

Affiant further saith naught.

/s/ David Keys
David Keys

STATE OF NEW YORK)
) ss.
COUNTY OF CLINTON)

Subscribed and sworn to before me by David Keys, who personally appeared before me and is known to me to be the person described herein and who declared that the aforementioned information is true and correct to the best of his knowledge and that he executed the foregoing affidavit, and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 6th day of July, 2004.

/s/ Candace F. Noel
Notary Public

My Commission Expires: October 12, 2005

APPENDIX 3

LARRY CRAWFORD
State Representative
District 117

HOME OFFICE
P. O. Box 402
California, MO 65018
Tele: 573-796-2023

CAPITOL OFFICE
State Capitol
201 West Capitol Avenue
Jefferson City, MO
85101-6806
Tele: 573-751-2134

[LOGO]

MISSOURI
HOUSE OF REPRESENTATIVES

August 14, 2003

Adam Ortiz
Juvenile Justice Center/ABA
10th Floor
740 15th Street, NW
Washington, DC 20003

Dear Mr. Ortiz:

The purpose of this letter is not to address whether Nanon Williams is guilty or innocent of committing murder in Texas. This letter is written because he was a juvenile at the time of the murder and his case is before the U.S. Supreme Court concerning the Eighth Amendment.

I am the state Representative of the 117th district in Missouri. I am a Republican, representing a rural district and consider myself a conservative. I continue to support capital punishment in principle and this past legislative session, I was the lead sponsor of a bill to allow law-abiding citizens in our state to carry a concealed gun. I was also the lead sponsor of House Bill 255, a measure to

raise the minimum age of death penalty eligibility from 16 to 18.

It seems to me that there indeed is clear majority support, at least among Missourians for such a change in our state law. A ban on juvenile death sentencing enjoys broad, majority support among Missouri citizens and elected officials. HB 255 failed to become law, not because of the legislature's opposition to its concept. Rather, it stalled due to the appropriate, high priority legislators placed on addressing our state's severe budget crisis and the indifference of a couple of key legislators.

I make the above assertions with confidence – it is supported by social scientific data, experience as well as anecdotal evidence. More than 60% of elected legislators in the 2002 election supported raising the age of death penalty eligibility to 18, according to a fall survey of candidates by the Missouri Catholic Conference. A March 2003 survey conducted by the Center for Advanced Social Research at the prestigious University of Missouri-Columbia School of Journalism found that 55% of Missourians opposed the death penalty for offenders under the age of 18, while only 34% supported the current law with 11% undecided. Numerous state and national polls conducted throughout the country over many years are consistent with these findings.

In the legislature, my bill and its Senate companion (SB312) enjoyed strong support, particularly among Republicans, who control both houses of our legislature. SB312's four co-sponsors were all Republicans and HB 255 had 20 co-sponsors – 15 of them Republican. Members of the House Crime Prevention and Public Safety Committee

supported my bill nearly unanimously, but the Chair would not allow members to vote the bill out of committee and onto the House floor. The Senate Judiciary Committee passed SB 312 out of committee 8-1 and urged the full Senate "do Pass" the legislation. A revised version of the bill was passed unanimously by the Senate as an amendment to another judiciary bill, but was gutted out of the joint House-Senate final conference committee report by a couple opponents of the reform measure – though it was supported by a strong majority of legislators. Gov. Bob Holden most likely would have signed into law HB 255/SB 312 according to conversations associates had with key staff members of the governor's staff.

I imagine lawmakers in probably all other states, during the current rocky fiscal climate, have struggled to bring numerous issues to the table that were not budget-oriented – even those which enjoy widespread popular support. Also, regrettably, the will of the legislature (which is, by extension, the will of the public) is at times obstructed by committee chairs and other leaders who are hostile or at least indifferent to certain statutory reforms.

I understand that the US Supreme Court considers state actions in determining a "evolving consensus" in certain matters. My experience in this last session indicates that such a consensus exists in Missouri, although it was unable to be manifested via a change in state law due to circumstances outlined above. During the next legislative session, beginning in January, I intend to again introduce a bill similar to HB 255. Hopefully this time, the will of

the people will be heeded and juvenile death sentencing will become a relic of a bygone era in Missouri.

Respectfully,

/s/ Larry Crawford
Rep. Larry Crawford
District 117

APPENDIX 4

IN THE UNITED STATES SUPREME COURT

DONALD ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER,	)	
Petitioner,	)	**No. 03-633**
v.	)	
CHRISTOPHER SIMMONS,	)	
Respondent.	)	

SWORN AFFIDAVIT OF LAWRENCE A. WEBER

I, Lawrence A. Weber, after being duly sworn on my oath, state as follows:

1. I am the Executive Director of the Missouri Catholic Conference in Jefferson City, Missouri.

2. In 2002, the Missouri Catholic Conference conducted a survey of candidates for the Missouri Senate and House of Representatives, asking for their views on the juvenile death penalty and other issues of interest to the MCC. Members of the House run for election every two years, while senators serve four-year terms. Thus, in given election year, every House seat and half of all Senate seats are up for election.

3. One of the survey's questions asked respondents whether they supported or opposed the following proposition: "Consistent with federal law, juveniles who commit crimes when they are under the age of 18 should be exempt from the death penalty."

4. Among the representatives and senators who were elected to office in 2002, 47 percent supported the above proposition, 12.7 percent opposed it, 12.2 percent expressed no opinion, and 28.2 percent did not respond to the survey.

Affiant further saith naught.

/s/ Lawrence A. Weber
Lawrence A. Weber

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Subscribed and sworn to before me by Lawrence A. Weber, who personally appeared before me and is known to me to be the person described herein and who declared that the aforementioned information is true and correct to the best of his knowledge and that he executed the foregoing affidavit, and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 25th day of June, 2004.

/s/ Alice Watters
Notary Public

My Commission Expires: 10/31/04

APPENDIX 5

IN THE UNITED STATES SUPREME COURT

DONALD ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER,	)	
Petitioner,	)	**No. 03-633**
v.	)	
CHRISTOPHER SIMMONS,	)	
Respondent.	)	

SWORN AFFIDAVIT OF GARY D. BRINKER

I, Gary D. Brinker, after being duly sworn on my oath, state as follows:

1. I am an associate professor of Sociology at Southwest Missouri State University and serve as the director of the university's Center for Social Sciences and Public Policy Research. I earned a Ph.D. in applied sociology from Baylor University in 1997, an M.A. in sociology from Baylor University in 1994, and a B.A. in sociology from Baylor University in 1991.

2. At the behest of, and through funding provided by, the Ban Youth Executions Coalition of Missouri, the Center for Social Sciences and Public Policy Research conducted a survey to assess the opinions of Missouri residents about various aspects of the death penalty, including the death penalty for criminals who are under eighteen years old at the time of their offenses. Under my direction, the Center contacted 500 Missouri residents, selected at random, between June 1 and June 10, 2004.

The sample size yields a margin of error of plus or minus 4.5 percent.

3. The attached tables are true and accurate excerpts of the survey results. The survey results show, among other things, (a) that 68.4 percent of respondents were strongly or somewhat in favor of the death penalty, 20.8 percent of respondents were strongly or somewhat opposed, and 10.8 percent expressed no opinion; (b) that 24.6 percent of respondents were in favor of the death penalty for a murder committed when the offender was under eighteen years of age, 59.1 percent were opposed to it, and 16.4 percent expressed no opinion; and (c) that, if one's state senator or representative voted to raise the minimum age of Missouri's death penalty to eighteen, 15.8 percent of respondents stated that they would be less likely to vote for him or her, 20.8 percent stated that they would be more likely to vote for him or her, 62.1 percent stated that their vote would not be affected, and 1.4 percent expressed no opinion.

Affiant further saith naught.

/s/ Gary D. Brinker
Gary D. Brinker

STATE OF MISSOURI)
) ss.
COUNTY OF GREENE)

Subscribed and sworn to before me by Gary D. Brinker, who personally appeared before me and is known to me to be the person described herein and who declared that the aforementioned information is true and correct to

the best of his knowledge and that he executed the foregoing affidavit, and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 21 day of June, 2004.

/s/ Deborah A. Underwood
Notary Public

My Commission Expires: 2/15/2005

TABLE 1: In general, what is your view on the death penalty?

	Frequency	Percent of Total Sample	Percent of Those Responding	Cumulative Percent
Strongly Favor	144	28.7	28.9	28.9
Somewhat Favor	199	39.7	39.9	68.7
Somewhat Oppose	56	11.2	11.2	80.0
Strongly Oppose	48	9.6	9.6	89.6
Don't Know/Depends on Circumstances	52	10.4	10.4	100.0
Total	499	99.6	100.0	
Refused	2	.4		
Total	501	100.0		

TABLE 2: Do you support or oppose the execution of a person who was under eighteen years of age when the murder was committed?

	Frequency	Percent of Total Sample	Percent of Those Responding	Cumulative Percent
Support	123	24.6	29.4	29.4
Oppose	296	59.1	70.6	100.0
Total	419	83.6	100.0	
Don't Know/Refused	82	16.4		
Total	501	100.0		

TABLE 3: If Your State Senator or Representative Voted to Raise the Minimum Age for the Death Penalty to 18 Years of age, would you be:

	Fre-quency	Percent of Total Sample	Percent of Those Respond-ing	Cumulative Percent
Less Likely to Vote for Them	79	15.8	16.0	16.0
More Likely to Vote for Them	104	20.8	21.1	37.0
Would Not Affect Vote	311	62.1	63.0	100.0
Total	494	98.6	100.0	
Don't Know/Depends	7	1.4		
Total	501	100.0		